PERSONAL JURISDICTION OVER NONRESIDENT CORPORATE DIRECTORS

Platt Corp. v. Platt
42 Misc. 2d 640, 249 N.Y.S.2d 1 (Sup. Ct. 1964)

Plaintiff Platt Corporation brought this claim against certain of its directors to recover damages allegedly stemming from a breach of their fiduciary duty to attend directors' meetings and to exercise independent supervision and control over the affairs of the corporation. Plaintiff asserted resulting mismanagement and waste of corporate assets.[1] The non-domiciliary directors, Blumberg and Hawley, were personally served at their respective domiciles in Florida and Illinois, and the instant opinion deals with a motion to vacate that service. For the six months' term of his directorship, Blumberg was never physically present in New York, where the corporation had its headquarters and principal place of business and where all directors' meetings were held. Although director Hawley went to six directors' meetings during his nearly twelve months as a director, his case is treated no differently by the court. Both defendant directors executed certificates in lieu of attendance at directors' meetings and waivers of notice of special meetings of the board, but all of these were executed outside of the State of New York, although they were dated on their face at New York. The court denied the motion to vacate, sustaining the extraterritorial service on the non-domiciliary directors under section 302 of New York's Civil Practice Law and Rules, which provides in part for such personal service on non-domiciliaries for causes of action arising from the commission of "a tortious act within the state."[2]

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[1] In New York such an action may rest upon the statutory or common law fiduciary duty of directors to maintain certain standards of care in the management of the corporation, N.Y. Bus. Corp. Law § 720 (a) (1) (A); Feuer, Personal Liabilities of Corporate Officers and Directors 11, 13-23 (1961); 3 Fletcher, Cyclopedia Corporations §§ 1029, 1033-38, 1049, 1070 (perm. ed. rev. repl. 1947); Grange, Corporation Law for Officers and Directors 403-04 (1940), particularly where the defendant may be characterized as a "dummy director," Kavanaugh v. Commonwealth Trust Co., 223 N.Y. 103, 119 N.E. 237 (1918), 3 Fletcher, *op. cit. supra* § 1062, 1070, 1090. Continued lack of attendance at directors' meetings and complete inattention to firm business will result in liability if it can be shown that there is a causal relation between a director's inattention and the losses suffered. See Bowerman v. Hamner, 250 U.S. 504 (1919); Grange, *op. cit. supra* at 409-10. The complaint in the instant case was held to state a cause of action in tort in a later opinion. Platt Corp. v. Platt, 21 App. Div. 2d 116, 249 N.Y.S.2d 75 (1964), *reversing* 41 Misc. 2d 435, 246 N.Y.S.2d 134 (1963).

[2] The section reads in full as follows:

§ 302. Personal jurisdiction by acts of non-domiciliaries.

(a) Acts which are the basis of jurisdiction. A court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, as to a cause of action arising from any of the acts enumerated in this

The present analysis is concerned with the issue whether the court properly exercised in personam jurisdiction over the defendants under the noted statute, rather than with the merits of plaintiff's claim, which were not at issue in the opinion considered herein. Although in statutes like section 302 jurisdiction appears to depend upon ultimate liability in tort,[3] the courts have so interpreted them that it is unnecessary to decide, for the purposes of determining jurisdiction, the ultimate question of whether defendant's conduct was tortious, resulting in liability to the plaintiff; rather, jurisdiction depends upon the existence of certain jurisdictional facts, which alone are at issue in a direct[4] or collateral[5] attack on the court's jurisdiction. What the jurisdictional facts are will vary with the individual case, but they must satisfy the minimum contacts test[6] for the constitutionality of in personam jurisdiction under the federal due process clause.[7] Jurisdictional requirements have been held to be met when the defendant, personally or through an agent, is the author of acts or omissions within the state, and when the com-

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section, in the same manner as if he were a domiciliary of the state, if, in person or through an agent, he:

1. transacts any business within the state, or
2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
3. owns, uses, or possesses any real property situated within the state.

(b) Effect of appearance. Where personal jurisdiction is based solely upon this section, an appearance does not confer such jurisdiction with respect to causes of action not arising from an act enumerated in this section.

The statute specifically limits jurisdiction to causes of action arising from the acts enumerated. This discussion will be limited to such causes of action, with the additional limitation that jurisdiction could not be sustained on one of the traditional grounds such as domicile or physical presence at time of service. The Supreme Court has distinguished the problem of suit in a forum for causes of action not arising from the defendant's activities within the forum. Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952). Apparently there is a concept of a level of systematic and continued activity within the state of forum such that a defendant may be subjected to suit there on causes of action arising from activities having no contact with or special relation to the state of forum. *Id.* at 446-49; Carmody-Forkosch, New York Practice § 211 (8th ed. 1963). However, the minimum contacts test is usually thought to apply only to suits arising out of defendant's "contacts" with the state of forum. See, *e.g.*, Restatement, Judgments § 23, comment *e.* (1942).

[3] Jenner & Tone, "Historical and Practice Notes," Ill. Ann. Stat. ch. 110, § 17, at 170-71 (Smith-Hurd Supp. 1963).

[4] See Nelson v. Miller, 11 Ill. 2d 378, 391-95, 143 N.E.2d 673, 680-82 (1957), interpreting an identical provision of Ill. Ann. Stat. ch. 110, § 17 (Smith-Hurd 1957), after which § 302 was patterned, Advisory Committee Notes, 1 New York Standard Civil Practice Service § 302 (1963).

[5] See Green v. Bluff Creek Oil Co., 287 F.2d 66 (5th Cir. 1961), reversing lower court for determining merits on collateral attack of Illinois default judgment.

[6] The minimum contacts test is discussed in text at notes 26-58, *infra.*

[7] See International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Feathers v. McLucas, 21 App. Div. 2d 558, 560, 251 N.Y.S.2d 548, 551 (1964) ("The single act statute has merely codified the minimum contacts test.").

plaint states a cause of action in tort.[8] Under a more extended view, the presence in the forum state of a product manufactured by defendant, allegedly causing injury to plaintiff because of its defective manufacture, has been held sufficient where the court felt it could reasonably infer the presence of other of defendant's products in the state.[9]

Regardless of what jurisdictional facts are required, jurisdiction does not depend upon ultimate liability in tort and is not destroyed by a finding of no ultimate liability at trial.[10] An opposite rule would be unduly prejudicial to the defendant: if the ultimate decision found him innocent of tort, the court would have lacked jurisdiction ab initio, the decision would not be res judicata, and defendant would be subject to another suit in his state of domicile.[11] Yet if jurisdiction depended on the outcome of a preliminary hearing determining the tortiousness of defendant's conduct, many issues would have to be relitigated at the trial on the merits after jurisdiction was found.[12] In either case, the defendant could in effect force trial of the issue of tort in his own state, under the guise of a trial of jurisdictional facts, by simply ignoring the foreign court's process, suffering default judgment to be rendered against him, and collaterally attacking jurisdiction in his own state.[13] Under the correct procedure, the plaintiff alleges jurisdictional facts in his complaint,[14] and upon making a motion to quash service of summons, defendant either controverts the jurisdictional facts alleged, in which case the court determines them as any issues of fact,[15] or allows the court to test their sufficiency as they stand in the petition.[16] In the instant case, the court found the requisite jurisdictional facts to be present, holding that the language of the statute requiring the commission of a "tortious act within the state" was satisfied, as were the requirements of due process.[17]

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[8] Nelson v. Miller, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); Smyth v. Twin State Improvement Corp., 116 Vt. 569, 8 A.2d 664 (1951).

[9] Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

[10] Nelson v. Miller, *supra* note 8.

[11] Nelson v. Miller, *supra* note 8, at 392-93, 143 N.E.2d 673, at 681 (dictum); see Weinstein, Korn & Miller, 1 New York Civil Practice. ¶302.09 (1964).

[12] *Ibid.*

[13] *Ibid.*

[14] Lebensfeld v. Tuch, 43 Misc. 2d 719, 252 N.Y.S.2d 594 (Sup. Ct. 1964); Jenner & Tone, "Historical and Practice Notes," Ill. Ann. Stat. ch. 110, § 17, at 170 (Smith-Hurd 1957); 1 New York Standard Civil Practice Service § 302, Forms 1:65, 1:66, 1:67 (1963).

[15] For examples of the court's handling of the situation when defendant contradicts plaintiff's assertions of jurisdictional facts, see Davis v. Ghan, 227 F. Supp. 867 (S.D. N.Y. 1964), where, on interrogatories by plaintiff, defendant admitted contacts with New York which the court held sufficient to sustain jurisdiction, and Gottlieb v. Sandia American Corp., 35 F.R.D. 223 (E.D. Pa. 1964), ordering preliminary hearing on certain issues.

[16] See, *e.g.*, O'Connor v. Wells, 43 Misc. 2d 1075, 252 N.Y.S.2d 861 (Sup. Ct. 1964).

[17] 42 Misc. 2d at 649, 249 N.Y.S.2d at 11.

Many states have in recent years enacted omnibus long-arm jurisdictional statutes similar to the New York statute,[18] the latter described by its authors as being designed "to take advantage of the constitutional power of the state . . . to subject non-residents to personal jurisdiction when they commit acts within the state." [19] This should illustrate that the territorial framework for personal jurisdiction constructed by *Pennoyer v. Neff*,[20] providing that a state could not acquire jurisdiction over a non-resident defendant by serving process upon him without the state,[21] has undergone considerable modification.[22] Yet it is still true that a state cannot acquire jurisdiction over a non-resident defendant who is not physically present within the state *simply* by serving him with process without the state or by publication.[23] The due process clause interposes two requirements: a power-basis for exercise of jurisdiction and a procedure for giving adequate notice to the defendant so that he

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[18] Comprehensive long-arm statutes, similar to the Illinois and New York statutes or more particularized: Conn. Gen. Stat. Ann. § 33-411 (1960) as amended Conn. Gen. Stat. Ann. § 33-411 (Supp. 1964); Idaho Code Ann. §§ 5-514-16 (Supp. 1963); Ill. Ann. Stat. ch. 110, § 16-17 (Smith-Hurd 1956); Laws of Kan. 1963, ch. 303, § 60-308; Me. Rev. Stat. Ann. ch. 112, § 21 (Supp. 1963); Mich. Stat. Ann. §§ 27A-701-41 (1962); Mont. Rev. Codes Ann. ch. 2701, Rule 4B (1964); N.C. Gen. Stat. §§ 55-144-46 (1960); Wash. Rev. Code Ann. 4.28-180-85 (1959); Wis. Stat. Ann. § 262.05 (Supp. 1965). Statutes of the Vermont type, allowing jurisdiction based on a contract to be performed in whole or in part within the state or on the commission of a tort in whole or in part within the state: Iowa Code Ann. § 617.3 (Supp. 1964); Md. Ann. Code art. 23, 92 (1957) (language variation: "or liability incurred for acts done within this state"); Minn. Stat. Ann. § 303.13 (Supp. 1963); Mo. Ann Stat. 351.630 (Supp. 1963) (commission of tort or transaction of business only); Tex. Rev. Civ. Stat. Ann. art. 2031b (1964); Vt. Stat. Ann. tit. 12, §855 (1958); W. Va. Code Ann. § 3083 (1961). Two states attempt expressly to allow jurisdiction wherever the Constitution permits: N. J. Rules of Civ. Proc. 4:4-4d (1958) (service by mail on foreign corporations, but "subject to due process"); R. I. Gen. Laws Ann. 9-5-33 (Supp. 1964) ("necessary minimum contacts . . . not contrary to . . . the constitution or laws of the United States"). In addition, several states allow extended jurisdiction either by statutory or judicial extension of the doing business concept, *e.g.*, Fla. Stat. Ann. 47.16-.161 (Supp. 1964) (engaging in business within state presumed by sale of goods to anyone within the state).

[19] Simonson v. International Bank, 14 N.Y.2d 281, 288, 200 N.E.2d 427, 431, 251 N.Y.S.2d 433, 348 (1964); Advisory Committee Notes, 1 New York Standard Civil Practice Service § 302 (1963).

[20] 95 U.S. 714 (1877). The court's classic statement of the doctrine of personal service appeared at 727: "Process from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them." See Anderson, "Personal Jurisdiction Over Outsiders," 28 Mo. L. Rev. 336, 343 (1963).

[21] Of course, the state can serve a resident or domiciliary temporarily without the state as if he were within the state, providing that the method of service is reasonably calculated to afford him notice of the suit. Milliken v. Meyer, 311 U.S. 457 (1940); Carmody-Forkosch, New York Practice § 192 (8th ed. 1963).

[22] See Annot., 2 L. Ed. 2d 1664 (1958), supplementing Annot., 94 L. Ed. 1167 (1950).

[23] Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957).

may defend.[24] Personal service of summons is, of course, adequate notice, so that the latter requirement is not at issue in the instant case.[25]

From territoriality as a power-basis the Supreme Court moved to a test of "minimum contacts" with the state of forum in the leading case of *International Shoe Co. v. Washington,*[26] opening the door for the recent expansion of state court jurisdiction. The test was stated by Mr. Chief Justice Stone:

> But now that *capias ad respondendum* has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." [27]

And further:

> Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relation.[28]

The most extended Supreme Court case sustaining jurisdiction under the minimum contacts test is *McGee v. International Life Ins. Co.*[29] The defendant's contacts in that case consisted of the mailing of a life insurance contract into California, its acceptance there by the insured,[30] and the receipt of the premiums and proofs of the insured's death, mailed from California. However, in *Hanson v. Denckla,*[31] the Court's majority said:

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[24] Anderson, *supra* note 20, at 338.

[25] 42 Misc. 2d at 648, 249 N.Y.S.2d at 10. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).

[26] 326 U.S. 310 (1945).

[27] *Id.* at 316.

[28] *Id.* at 319.

[29] 355 U.S. 220 (1957). The *McGee* case was strongly criticized as a violation of the territorial principle of law in Stimson, "Omnibus Statutes Designed to Secure Jurisdiction Over Out-of-State Defendants," 48 A.B.A.J. 725 (1962).

[30] The policy, originally purchased from an Arizona corporation, was subsequently assumed by defendant Texas corporation.

[31] 357 U.S. 235 (1958) (5-4 decision). The settlor of a trust, who had become a Florida resident, mailed from Florida to a Delaware trust company the execution of a power of appointment. The power of appointment was notarized and witnessed in Florida and the settlor subsequently died there and her will, substantially affected by the power of appointment, was probated in Florida. The Court held that Florida

> But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. . . . Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the "minimal contacts" with that State that are a prerequisite to its exercise of power over him.[32]

Although it has been said that this language signaled a return to territoriality as the power-basis for in personam jurisdiction,[33] that interpretation is unlikely in view of the fact that a minority of the Court would have sustained jurisdiction and in view of the following language of the majority:

> The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.[34]

Rather, the *Hanson* case illustrates that the Court is not willing to allow untrammeled nationwide jurisdiction to state courts, for both the majority and the minority indicated that territorial limitations on the power of the states still have significance.[35]

There appear to be three vaguely defined factors involved in the Supreme Court's concept of minimum contacts as a basis for a state's constitutional exercise of in personam jurisdiction over non-resident defendants. In the non-resident motorist cases, the basis for the state's jurisdiction is the police power,[36] and in *McGee* the Court pointed to the "manifest interest" of the state in providing its citizens with redress against non-paying, out-of-state, insurers, who were within a traditional field of state regulation.[37] Some type of state interest in the defendant's con-

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acquired no jurisdiction over the Delaware trustee, the corpus of the trust, or the beneficiaries (other than those living in Florida) by personal service upon them outside of the state.

[32] 357 U.S. at 251.

[33] Stimson, *supra* note 29.

[34] 357 U.S. at 253.

[35] Kurland, "The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts," 25 U. Chi. L. Rev. 569, 619, 623 (1958).

[36] See, *e.g.*, Hess v. Pawloski, 274 U.S. 352 (1927). The definitive article placing such jurisdiction on a non-consensual, police-power basis is Scott, "Jurisdiction Over Nonresident Motorists," 39 Harv. L. Rev. 563 (1926).

[37] McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957). See Travelers Health Ass'n v. Virginia, 339 U.S. 643, 647-49 (1950).

tact with the forum state would thus appear to be one factor of the minimum contacts test.[38]

The Supreme Court has spoken of a higher degree of state interest[39] in the few cases it has decided than have many state courts. The rationale of the state decisions has been that the state has a legitimate interest in providing a reasonable means of redress in its courts against persons who, having had substantial contact with the state, have incurred obligations to those entitled to the state's protection.[40] The Illinois Supreme Court in *Nelson v. Miller*[41] stated: "The [Illinois] legislature may direct its policy to the fact of injury as well as to its probability."[42] These notions make jurisdiction appear to depend in part upon the consequences in fact of defendant's act, despite the fact that injury caused by defendant to plaintiff need only be alleged, not proved, under the proper interpretation of "tortious act" statutes like section 302(a)(2).[43] It is the quality and nature of the defendant's act, rather than its consequences, that gives the state an interest in providing extended personal jurisdiction for the adjudication of claims arising out of that act.[44] Thus, in *Hanson v. Denckla,* the Court distinguished the *McGee* case on the lack of defendant's purposeful solicitation in the forum state.[45] Since there was no act of such quality and nature, the suit there in question was not one to enforce a consequent obligation in which the state had an interest.

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[38] Anderson, *supra* note 20, at 350; 50 Ill. B. J. 438 (1962). See Towe, "Personal Jurisdiction Over Non-Residents and Montana's New Rule 4B," 24 Mont. L. Rev. 3, 13-15 (1963). *Cf.* Restatement (Second), Conflict of Laws § 84, comment *c* (Tent. Draft No. 3, 1956).

[39] The Supreme Court has used the term "manifest interest" in the *McGee* and *Hanson* cases and has never sanctioned extended jurisdiction without such an interest as the term there described. *Cf.* Watson v. Employers Liability Corp., 348 U.S. 66 (1954) (Louisiana direct action statute, providing compensation for auto accident victims); Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950) (out-of-state, unauthorized, mail-order insurer); International Shoe Co. v. Washington, 326 U.S. 310 (1945) (collection of state unemployment taxes); Henry L. Doherty & Co. v. Goodman, 294 U.S. 623 (1935) (providing redress for victim of unauthorized security dealing).

[40] Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961); Nelson v. Miller, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664 (1951). Some courts rather fictitiously resort to the language of dangerous instrumentality in an attempt to show greater state interest. *Cf.* Singer v. Walker, 21 App. Div. 2d 285, 250 N.Y.S.2d 216 (1964) (hammer dangerous instrumentality if defectively made); Feathers v. McLucas, 21 App. Div. 2d 558, 281 N.Y.S.2d 548 (1964) (truck gasoline tanker dangerous if defectively made).

[41] 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

[42] *Id.* at 389, 143 N.E.2d at 679.

[43] See text to notes 3-16 *supra.* See "Developments in the Law—State Court Jurisdiction," 73 Harv. L. Rev. 909, 928 (1960).

[44] International Shoe Co. v. Washington, 326 U.S. 310, 318 (1945); Restatement (Second), Conflict of Laws § 84, comment *c* (Tent. Draft No. 3, 1956); Towe, *supra* note 38, at 16-18.

[45] 357 U.S. at 252-53.

The second factor of the minimum contacts test looks to the extent of defendant's contacts with the forum state,[46] rather than their quality. Clearly, however, the two are interdependent.[47] For example, in *McGee* the quality of the defendant's act gave the state an interest in providing extended personal jurisdiction, although it might have seemed that there was as much contact in *Hanson*.[48] Probably all acts by a defendant within the state of forum that may result in torts are of sufficient quality to allow the state to exercise extended personal jurisdiction over the actor.[49] However, where the defendant's activities occurred outside the forum state, allegedly resulting in injury within, the Supreme Court of Illinois found it necessary to infer a large number of contacts to bolster its decision.[50] The quantity of contact becomes most important in contract actions where the contacts of defendant with the forum state in relation to the transaction are closely examined by the courts; the quality of a single act by defendant, such as signing a contract within the forum state, is felt to be insufficient to allow the state extended personal jurisdiction over the defendant.[51]

The third factor involved in the minimum contacts test is one of trial convenience[52] and is based on considerations similar to those of the doctrine of forum non conveniens. In the *McGee* case,[53] the insured's death occurred in plaintiff's home state—California— and witnesses for or against the insurance company's claim of suicide were located there. In *Gray v. American Radiator & Standard Sanitary Corp.*, the court declared that under the Illinois statute the situs of the injury should be considered the place where the tort occurred for purposes of personal jurisdiction.[54] This principle in fact represents the conflict-of-laws principle for choice of law,[55] and the Supreme Court is united on the point that "jurisdiction over defendants does not flow as a necessary concomitant of jurisdiction to apply local law to the con-

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[46] Restatement (Second), *supra* note 44, § 84, comment *c*; 50 Ill. B.J. 438, 441 (1962) (called simply minimum contact).

[47] Restatement, *supra* note 44, § 84, comment *c*. *Cf.* "Developments in the Law," *supra* note 43, at 923-24.

[48] See Kurland, *supra* note 35, at 622 n.280.

[49] See Stimson, *supra* note 29, at 726; "Developments in the Law", *supra* note 43, at 926.

[50] Gray v. American Radiator & Standard Sanitary Corp., *supra* note 40.

[51] See Compania de Astral, S.A. v. Boston Metals Co., 205 Md. 237, 107 A.2d 357 (majority), 108 A.2d 372 (dissent) (1954), *cert. denied*, 348 U.S. 943 (1955). The *Boston Metals* case was cited with approval by the Supreme Court in *McGee*. 355 U.S. 223 n.2 (1957). *Cf.* "Developments in the Law," *supra* note 43, at 926-28.

[52] Carmody-Forkosch, New York Practice § 211, at 191 (8th ed. 1963); Restatement, *supra* note 44, § 84, comment *c*; Towe, *supra* note 38, at 15-16; Annot., 94 L. Ed. 1167 (1950); 50 Ill. B.J. 438, 441 (1962).

[53] 355 U.S. 220, 223 (1957).

[54] Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

[55] 50 Geo. L.J. 310, 312 (1961); 36 Tulane L. Rev. 336, 337 (1962).

troversy."[56] Yet jurisdiction to apply local law is considered an important factor of convenience.[57] In most tort actions the factors of convenience will weigh in favor of the situs of the injury as the forum. Yet the Supreme Court has said explicitly that convenience alone is not sufficient to sustain jurisdiction.[58] This would seem proper, for, carried to the extreme, mere convenience as a jurisdictional criterion would allow trial in states which have no interest whatever in the proceedings, but which might be most convenient because of their central location to the states of domicile of the various parties. This might lead to intolerable forum shopping as plaintiffs sought the most favorable laws, procedures, and courts. Trial convenience, then, is another factor to be balanced in determining whether a state should exercise extended personal jurisdiction in a given case.

Applying the minimum contacts test as analyzed, the instant case would seem to be a proper one for the state's assumption of personal jurisdiction over the non-resident directors, assuming an adequately drafted enabling statute.[59] New York would seem to have whatever quantum of state interest is required—whether manifest or something less—in the duties assumed by directors of a corporation having its principal place of business in New York. Under its police power to regulate corporations the state could probably condition the doing of business on such a scale in New York on the execution by directors of a formal consent to suit in that state for causes of action arising out of their directorships.[60] Presumably the directors would be subject to suit in New York for any torts committed in the exercise of their duty to attend directors' meetings.[61] They should not therefore be allowed to set up omission of that duty as a bar to jurisdiction. Concerning the

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[56] Kurland, *supra* note 35, at 619.

[57] Hanson v. Denckla, 357 U.S. 235, 258 (1957) (dissent). See Kurland, *supra* note 35, at 619-20; 19 Wash. & Lee L. Rev. 271 (1962).

[58] Hanson v. Denckla, 357 U.S. 235, 254 (1957).

[59] See Restatement, *supra* note 44, § 84, comment *e*; § 85, comment *d*.

[60] See Restatement (Second), Conflict of Laws § 168, § 169 (Tent. Draft No. 7, 1962). *Cf.* N.Y. Bus. Corp. Law § 1318. The *International Shoe* case dispensed with fictive consent as a basis for jurisdiction, 326 U.S. at 318, substituting the minimum contacts test, 326 U.S. at 316. But actual consent to the state's jurisdiction was recognized even in Pennoyer v. Neff, 95 U.S. at 733. Thus, one who brings suit in a state, or acts as an attorney of record in an action, is considered to have voluntarily assented to the court's exercise of jurisdiction over him for causes of action related to such activities by whatever reasonable means of notice the state might devise, the power-basis requirement for the exercise of jurisdiction being satisfied. Adams v. Saenger, 303 U.S. 59, 67-68 (1938); Kurland, "The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts," 25 U. Chi. L. Rev. 569, 575 (1958). This is the principle upon which the waiver of objections to personal jurisdiction by a general appearance is based. *Ibid.*

[61] Restatement (Second), Conflict of Laws § 187a, § 188, § 192 (Tent. Draft No. 7, 1962).

extent of defendants' contacts with New York, a single contract made and performable only within the forum state has been held to be contact sufficient to justify a state's exercise of personal jurisdiction over a non-resident defendant by extraterritorial service.[62] Although a director-corporation relation is not truly contractual, but a fiduciary relationship, the analogy of sufficient minimum contact is present. In addition to the directorship relation and the location of the corporation's principal office in New York, significant contact is founded in the necessity of performance of directoral duties in New York. The factor of trial convenience in New York is also significant. The corporate records are in New York, New York law probably governs[63] and the stockholders are more likely to be there than anywhere else that can be designated.[64] Thus, there are cogent arguments for requiring the non-resident directors to defend in New York. Furthermore, one of the principal dangers of expanded jurisdiction, that of drawing defendant from a distance at great expense to defend a frivolous lawsuit, would seem to be negligible in the case of actions by corporation against their own directors.[65]

Difficulties arise in the instant case when one views the facts over which jurisdiction was assumed, the court's reasons for assuming it, and the statute upon which jurisdiction was based. By construing the statute as it did, the court adopted a strained interpretation of section 302(a)(2), which requires the commission of "a tortious act within the state." The plain meaning of the quoted phrase would seem to require that the act or ommission[66] asserted as a jurisdictional fact occur within the

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[62] Compania de Astral, S. A. v. Boston Metals Co., *supra* note 51; Janklow v. Williams, 43 Misc. 2d 1053, 252 N.Y.S.2d 785 (Sup. Ct. 1964); Lewis v. American Archives Assoc., 43 Misc. 2d 721, 252 N.Y.S.2d 217 (Sup. Ct. 1964). *But see* Simonson v. International Bank, 14 N.Y.2d 281, 200 N.E.2d 427, 251 N.Y.S.2d 433, (1964); Hoard v. U.S. Paint, Lacquer & Chem. Corp., 44 Misc. 2d 72, 253 N.Y.S.2d 89 (Sup. Ct. 1964).

[63] N.Y. Bus. Corp. Law § 1317. *But see* Restatement (Second), Conflict of Laws § 187 (Tent. Draft No. 7, 1962); *id* § 166a, Caveat No. 1.

[64] A further convenience argument used by the court in the instant case is that the plaintiff may be forced to prosecute multiple actions if jurisdiction is not sustained by New York. 42 Misc. 2d at 649, 249 N.Y.S.2d at 11.

[65] Consistently with these arguments, several states have provided for extraterritorial service on non-resident directors of corporations having their principal place of business therein. Mich. Stat. Ann. § 27A.705(6) (Revised Judicature Act 1962); Mont. Rev. Codes Ann. ch. 2701, Rule 4B (1964). See Laws of Kan. 1963, ch. 303, § 60-308; Wis. Stat. Ann. § 262.05(8) (Supp. 1965) (directors of domestic corporations only).

[66] As the court in the instant case holds, tortious omissions would seem to satisfy the meaning of the statute as well. To hold otherwise would be to make a sterile misfeasance-nonfeasance distinction. Such an omission may in some cases be properly deemed to have occurred in a particular state. Such a case would exist, for example, where a parent knew his child would light matches left lying around, did not take proper precautions, and, as a result, the child burned down the hotel in which they were staying. The parent omitted to act within a particular state and would be subject to that state's extraterritorial process.

borders of New York,[67] *i.e.*, that the allegedly tortious conduct itself, not just the resultant injury take place in New York.[68] Viewed as requiring these operative jurisdictional facts, section 302(a)(2) is clearly constitutional.[69] But these are not the existing jurisdictional facts in the instant case.[70] The court resorts to the fiction that "a tortious act is deemed to have been committed at the place of injury resulting from such act" in order to sustain jurisdiction.[71] This is a statement of result rather than a reason. In reality the non-acts regarded by the court as the basis of jurisdiction had no location, and an attempt to assign them one in New York rather than Florida or Illinois is an effort required by an inadequate statute. The court's effort also focuses on the tortiousness of defendant's conduct and the fact of injury, which have been shown to be improper jurisdictional facts.[72] The key jurisdictional fact in the instant case is the assumption of duties by the defendants as directors of a corporation located in New York, which could in no way be described as a "tortious act."

Notwithstanding these criticisms, however, it is still arguable that the court's exercise of jurisdiction in the instant case was constitutional since the criticisms concern the court's reasons for sustaining jurisdiction and its interpretation of section 302(a)(2). It is usually held that the scope of a state statute is a problem of state law only. It will be argued, however, that there may be a constitutional problem when jurisdiction is based on a statute that has no proper application to the facts at hand. As to whether the legislature intended to provide by this "tortious act" statute for jurisdiction over non-resident defendants who have not acted but have merely effected consequences within New York, the legislative history is ambiguous.[73] Nevertheless, the New York courts

[67] Thornton, "First Judicial Interpretations of the New York Single Act Statute," 30 Brooklyn L. Rev. 285, 291-94, 296-301 (1964) (torturous construction); 50 Geo. L. J. 310, 312-13 (1961) (strained interpretation).

[68] Legislation, 29 Brooklyn L. Rev. 305, 311 (1963).

[69] See Nelson v. Miller, *supra* note 40, Smyth v. Twin State Improvement Corp., *supra* note 40; "Developments in the Law," *supra* note 43, at 926; Legislation, 29 Brooklyn L. Rev. 305 (1963). *Cf.* Simonson v. International Bank, 14 N.Y.2d 281, 200 N.E.2d 427, 251 N.Y.S.2d 433 (1964).

[70] See discussion in text at notes 59-65.

[71] 42 Misc. 2d at 646, 249 N.Y.S.2d at 8. This fiction was derived from Gray v. American Radiator & Standard Sanitary Corp., *supra* note 54, which interprets the Illinois statute after which § 302(a)(2) was patterned. See Simonson v. International Bank, *supra* note 69; Advisory Committee Notes, 1 New York Standard Civil Practice Service § 302 (1963).

[72] See text at notes 3-16, 40-45, 74 *infra;* "Developments in the Law," *supra* note 43, at 1017 n.701.

[73] 1 Weinstein, Korn, & Miller, New York Practice ¶ 302.10 (1964). However, Gray v. American Radiator & Standard Sanitary Corp., *supra* note 54, decided before passage of § 302, interpreted the Illinois statute to allow jurisdiction where consequences only occurred in Illinois. Yet this result was contrary to four previous cases interpreting the Illinois statute, Insull v. New York, World-Telegram Corp.,

have tended to accept the idea of aquiring personal jurisdiction by extraterritorial service on non-resident individuals and corporations in this situation, drawing a line roughly based on the reasonable expectation that defendant's conduct outside the forum state would result in consequences within,[74] a theory which at least properly focuses on the quality of defendant's act rather than on the consequences in fact resulting from it. But the course of the decisions has been far from uniform,[75] and it is apparent that the minimum contacts test has left the courts at large on the issue of personal jurisdiction, despite the presence or absence of particular statutory provisions.[76]

It is said that the *International Shoe* case "contains only a statement of policy when 'what are needed are rules of a fairly definite character . . . policy alone will not suffice [though] any such rules must be firmly based upon considerations of policy.' "[77] In regard to the vague and undefined standards of *International Shoe* and *McGee*, the New York Court of Appeals recently said:

> The formulation of specific rules to implement such a standard seems more appropriately the function of the legislature than of the

273 F.2d 166 (7th Cir. 1959); Trippe Mfg. Co. v. Spencer Gifts, Inc., 270 F.2d 821 (7th Cir. 1959); Hellriegel v. Sears Roebuck & Co., 157 F. Supp. 718 (N.D. Ill. 1957); Grobark v. Addo Machine Co., 16 Ill. 2d 426, 158 N.E.2d 73 (1959). The legislative history does tend to refute the idea that § 302(a)(2) was intended to apply to torts of this type. The section originally read "commits a tortious act within the state *resulting in physical injury to person or property*" (emphasis supplied), and was rewritten by New York Senate committee merely to make sure that libel, slander and similar actions were excluded. Carmody-Forkosch, New York Practice § 196 nn.9, 11 (8th ed. 1963). The kind of economic loss through neglect which would seem to be the basis for the complaint in the instant case would not appear to be encompassed by the original wording.

[74] See Feathers v. McLucas, 21 App. Div. 2d 558, 251 N.Y.S.2d 548 (1964); Ellis v. Newton Paper Co., 44 Misc. 2d 134, 253 N.Y.S.2d 47 (Sup. Ct. 1964); Fornabaio v. Swissair Transport Co., 42 Misc. 2d 182, 247 N.Y.S.2d 203 (Sup. Ct. 1964); Johnson v. Equitable Life Assur. Soc., 43 Misc. 2d 850, 252 N.Y.S.2d 477 (Sup. Ct. 1964); Moss v. Frost Hempstead Corp., 43 Misc. 2d 357, 251 N.Y.S.2d 194 (Sup. Ct. 1964). *But see* Greenberg v. R. S. P. Realty Corp., 43 Misc. 2d 182, 250 N.Y.S.2d 460 (Sup. Ct. 1964) (by implication); Muraco v. Ferentino, 42 Misc. 2d 104, 247 N.Y.S.2d 598 (Sup. Ct. 1964).

[75] The New York courts reiterate the language of the *Gray* case and of reasonable jurisdiction when they sustain jurisdiction. See note 74 *supra*. However, the courts speak of mere isolated contacts and cite *Hanson* when they reject jurisdiction. Simonson v. International Bank, *supra* note 69 ("bare allegation of a single contract" but reversing lower court on another ground); Muraco v. Ferentino, 42 Misc. 2d 104, 247 N.Y.S.2d 598 (Sup. Ct. 1964); Perlmutter v. Standard Roofing & Tinsmith Supply Co., 43 Misc. 2d 885, 252 N.Y.S.2d 583 (Sup. Ct. 1964).

[76] See Anderson, "Personal Jurisdiction Over Outsiders," 28 Mo. L. Rev. 336, 367 (1963). See generally *id.* at 352-68.

[77] Dodd, "Jurisdiction in Personal Actions," 23 Ill. L. Rev. 427, 437 (1929); Kurland, *supra* note 35, at 591.

> courts. . . . Legislation, as distinguished from judicial revision, is the more suitable vehicle for fixing precise jurisdictional guidelines for the future; only through such legislation may foreign corporations be put on notice that they run the risk of being exposed to suit here, even though they may not be "doing business" in New York, if they "have occasion to enter the state for the purpose of making contracts here."[78]

The quoted language would seem to be equally applicable to individual or corporate defendants who act or fail to act outside the state of forum. The New York statute in question fails to give explicit notice that by so doing, such defendants may be subject to suit within New York. Yet in the instant case, because the directors had a fiduciary duty to perform the functions of their directorship, this lack of notice does not appear unduly prejudicial.

If the due process clause has any function in the area of personal jurisdiction, it must include protection of defendants against distant litigation, especially groundless litigation.[79] The indefiniteness of the minimum contacts test means that a defendant served outside the forum state as a practical matter must always appear to contest jurisdiction. Not knowing whether he will be subject to jurisdiction in the forum state, he cannot safely suffer a default judgment and collaterally attack the court's exercise of jurisdiction, as he could if it were clear that the court had no jurisdiction.[80] Yet because of the complexity of the test for personal jurisdiction, it is likely that in a significant number of cases there will be a lengthy contest of the issue in the distant state, with resultant inconvenience and expense to the defendant, the very evils that the due process limitation should prevent.[81] To the extent that state statutes fail to formulate clear, nonfictive, and specific issues of jurisdictional fact, they fail to provide a defendant with a basis for utilizing his right of collateral attack and exacerbate the problem of making defendant litigate in a distant forum of plaintiff's choosing.

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[78] Simonson v. International Bank, 14 N.Y.2d 281, 287-88, 200 N.E.2d 427, 430, 251 N.Y.S.2d 433, 438 (1964). See "Developments in the Law," *supra* note 43, at 1016-17.

[79] National Equipment Rental v. Szukhent, 375 U.S. 311, 325-33 (1964) (Black, J., dissenting); 75 Harv. L. Rev. 1431 (1962). See Dodd, *supra* note 77, at 439; "Developments in the Law," *supra* note 43, at 924, 991.

[80] See Adams v. Saenger, 303 U.S. 59, (1938).

[81] 75 Harv. L. Rev. 1431, 1432 (1962). A defendant may usually remove an action within the original jurisdiction of the federal courts to the federal court of the district in which the action was pending. 28 U.S.C. § 1441(a) (1958). Since diversity of citizenship will usually exist in these cases, most will be removable. But this does not substantially alleviate the problem presented, which is: should defendant be called upon to defend at all in a distant tribunal, and not in which distant tribunal should he defend. True, once defendant has removed the case, it may be transferred to "any other district or division where it might have been brought." 28 U.S.C. § 1404(a) (1958). See Chicago, R. I. & P. Ry. v. Igoe, 212 F.2d 378 (7th Cir. 1954). But this requires a showing of "convenience of parties and witnesses in the interest of justice," 28 U.S.C. § 1404(a) (1958), which may be in essence as burdensome as showing lack of minimum contact.

The method of raising objections to personal jurisdiction may be unduly prejudicial to defendants, depending on state procedural law.[82] Many states still require a special appearance for the purpose of raising objections to the court's jurisdiction over the person of the defendant.[83] A special appearance is usually easily waived, and the defendant may submit inadvertantly to the jurisdiction of a court and be forced to defend where perhaps it was not necessary. In addition to the hazards of the special appearance, many states allow no appeal of rulings on motions until final judgment.[84] When the court rules against defendant in these states, he must either stand trial or hazard a guess that the court's ruling was improper by defaulting, suffering final judgment to be rendered against him, and appealing. Again, the more undefined and fictional the statutory basis for jurisdiction, the more hazardous is this choice.

A principle allowing a state to assume personal jurisdiction in the situation where consequences are effected within the forum state from without its boundaries tends to discriminate between financially strong and weak defendants, particularly in the products liability area. The national manufacturer, with a multi-state organization and ample financial resources, finds it easier to defend all over the country than does the small local manufacturer or distributor, who may not have the resources to defend in a distant tribunal.[85] Two possibilities for extortion arise from this situation: primarily, the possibility of frivolous suits would seem to increase directly proportionally to the probability of a default judgment against such a defendant, and secondly, the "very threat of such a suit can be used to force payment of alleged claims, even though they be wholly without merit."[86]

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[82] See "Developments in the Law," *supra* note 43, at 934; "Student Symposium—A Reconsideration of 'Long-Arm' Jurisdiction," 37 Ind. L.J. 333, 341 (1962). See generally, "Developments in the Law," *supra* at 991-997.

[83] *E.g.*, Ohio Rev. Code Ann. § 2703.09 (Page 1953); Ill. Ann. Stat. ch. 110 § 20 (Smith-Hurd 1956).

[84] *E.g.*, Ohio Const., art. IV, § 6 ("judgments or final orders"); 2 Ohio Jur.2d *Appellate Review* § 28 (1953). This does not appear to be the rule in New York or Illinois. *Cf.* N.Y. CPLR §§ 5701, 3211, 320 (McKinney's Supp. 1964), construed in Renewal Prods., Inc. v. Kleen-Stick Prods., Inc., 43 Misc. 2d 645, 251 N.Y.S.2d 778 (Sup. Ct. 1964); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961) (direct appeal to supreme court on constitutional questions).

[85] "Developments in the Law," *supra* note 43, at 929-30; "Student Symposium," *supra* note 82, at 343.

[86] National Equipment Rental v. Szukhent, *supra* note 79, at 329. These possibilities are not necessarily alleviated by including in the calculation or balance of interests a factor of the defendant's strength or weakness as has been suggested. "Student Symposium," *supra* note 82, at 348-52. The complexity of the issues involved in determining the "best jurisdiction" for all concerned on every special appearance creates considerable prejudice to defendants in and of itself, because of the substantial expense to defendant in locating and paying an attorney to litigate such issues. Nor is a liberal use of the doctrine of forum non conveniens a good solution for the same reasons.

Whether the defendant is an individual or a corporation may be relevant in this connection, as individual businesses tend to be smaller and, in contrast to corporations, enjoy no limited liability.[87] The limitation of many state statutes to foreign corporations may still serve a valid interest here, although probably originally based on the privileges and immunities clause differentiation.[88] By making more burdensome the contest of the personal jurisdiction question alone, indefinite state statutes contribute to the problems of the weak defendant.

In sustaining jurisdiction in the instant case the court reflected the modern trend toward expanded personal jurisdiction, a trend ultimately based on the change since *Pennoyer* from localized economies to the present interlocking national market, with easy interstate transportation and communication.[89] With products from every section finding their way into every other section and multi-state business transactions becoming more and more prevalent, litigation involving non-residents has become increasingly common. The compelling argument is made that the state is interested in providing its citizens redress in its own courts for causes of action growing out of these transactions.[90] Yet if it has become easier to defend in a distant forum because of increasing ease of transportation and communication, it has also become easier to bring suit in such a forum. If a state's procedural laws should provide for trial in the state so that plaintiff's remedy will not be limited by his having to bring suit in a distant

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[87] See "Developments in the Law," *supra* note 43, at 936. An individual may have an additional constitutional ground of defense. See generally, Campbell, "Jurisdiction Over Nonresident Individuals and Foreign Corporations: The Privileges and Immunities Clause," 36 Tulane L. Rev. 663 (1962). Campbell's thesis is that the Court still has not faced the problem of the privileges and immunities clause as applied to individual nonresident defendants, to wit: a state cannot exclude a citizen under the privileges and immunities clause, and since it cannot exclude him it cannot impose conditions on his entrance, with the exception of regulations under the police power. Thus, the Court would seem to have to hold a great many activities within the police power to sustain such statutes as § 302. The Court has not been faced with the problem since only corporations have been involved in the recent cases. However, Campbell is of the opinion that the Supreme Court will not invalidate such legislation and will find a basis for treating foreign corporations and nonresident individuals alike for jurisdictional purposes. Campbell's thesis finds support in Restatement, Judgments § 22, comment *a* (1942); Restatement (Second), Conflict of Laws § 77-86 (Tent. Draft No. 3, 1956); Towe, *supra* note 38, at 7-9.

[88] The following state statutes are limited to foreign corporations: Conn. Gen. Stat. Ann. § 33-411 (1960), as amended, Conn. Gen. Stat. Ann. § 33-411 (Supp. 1964) Md. Ann. Code art. 23 § 92 (1957); Minn. Stat. Ann. § 303.13 (Supp. 1964); Mo. Ann. Stat. § 351.630 (Supp. 1963); N.C. Gen. Stat. 55-144 (1960); Vt. Stat. Ann. tit. 12, § 855 (1958). W. Va. Code Ann. § 3083 (1961) focuses on foreign corporations, but its provisions also touch domestic corporations.

[89] See Hanson v. Denckla, 357 U.S. 235, 250-51 (1958); McGee v. International Life Insurance Co., 355 U.S. 220, 222-23 (1957).

[90] Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961); Nelson v. Miller, 11 Ill. 2d. 378, 143 N.E.2d 673 (1957).

state, they should also be arranged so that defendant is not hampered in presenting his defenses, or forced to defend groundless suits in a distant forum or else suffer a default judgment, especially since it is the defendant that has the protection of the Constitution.[91]

In deciding whether to provide for personal jurisdiction in the situation where consequences have allegedly been caused in the state from outside, a legislature should balance the preceding interests carefully, together with the state's own interests in effectuating its policies and laws and the possible general hazards of too many forums.[92] The extent to which the court system is generally burdened by a two-step litigation process, where a judgment obtained in one jurisdiction must be executed by a special proceeding in another, should also be considered.[93] The statutes should set up operative jurisdictional facts specifically and with particularity, to avoid insofar as possible the burdens on defendant arising from indefinite statutes.[94] In this connection there may be inherent difficulty with "causing consequences" statutes, since jurisdiction is often said to depend on the state's interest in consequences effected within its borders; yet these consequences are not held to be proper jurisdictional facts. If it is decided on balance that such jurisdiction is desirable, the legislature should scrutinize carefully the state's procedural law, eliminating such sources of prejudice to the defendant as the special appearance and the final judgment rule. Safeguards, such as requiring payment of defendant's litigation expenses by plaintiff, should be incorporated to lessen the opportunity for frivolous suits against defendants.[95]

The courts should not allow the "expansion of commerce" and "convenient jurisdiction" arguments to overcome the policy of logical statutory construction, thus hindering the development of the definite rules

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[91] See "Developments in the Law," *supra* note 43, at 924.

[92] The passage by many states of long-arm statutes tends to increase possibilities of forum shopping and harrassment of defendants. In New York, jurisdiction has been sustained where acts and consequences are in different states on the basis of either. Singer v. Walker, 21 App. Div. 2d 285, 250 N.Y.S.2d 216 (1964) (acts the basis of jurisdiction in New York); Feathers v. McLucas, 21 App. Div. 2d 558, 251 N.Y.S.2d 548 (1964) (consequences only occurred in New York). Including the home state, where defendants can usually be served, there are thus at least three forums available to plaintiffs with simple tort claims. *But see* Ellis v. Newton Paper Co., 44 Misc. 2d 134, 253 N.Y.S.2d 47 (1964). If plaintiff institutes simultaneous suits, defendant must at least plead a prior pending suit in the second court to avoid a default judgment, and there is the hazard that two or more courts both may decide they have jurisdiction, and defendant will have to defend two lawsuits in different states. *Cf.* Hanson v. Denckla, 357 U.S. 235 (1958) (litigation conducted in two states). Furthermore, plaintiffs may often institute simultaneous suits, not knowing under the indefinite minimum contacts test which states may have jurisdiction and fearing that the statute of limitations may run in the proper state while a ruling on jurisdiction is pending in the first state.

[93] "Student Symposium," *supra* note 82.

[94] See, *e.g.*, Wis. Stat. Ann. § 262.05 (Supp. 1964).

[95] See, *e.g.*, Wis. Stat. § 262.19-.20 (Supp. 1964).

for in personam jurisdiction so necessary for the protection of defendants. When a statute must, to provide jurisdiction in a particular situation, be so interpreted that it no longer provides notice to defendants generally, a court should rule that it may not constitutionally be applied in that situation. An opposite interpretation makes a statute so indefinite that defendants may not rely upon it and gives rise to further litigation about its meaning. Yet in the instant case, where the policies of prevention of frivolous suits and notice to defendant are not so applicable, it is difficult to say that jurisdiction was unconstitutionally assumed under the statute used. But whether or not this court's decision goes beyond the Supreme Court's declared concept of permissible personal jurisdiction under the due process clause, the decision points to a need for a clarification of that concept for the guidance of both courts and legislatures, as well as for defendants.